



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

FRANK THEATRES BAYONNE/SOUTH
COVE, LLC, *et al.*¹

Debtors.

Order Filed on July 8, 2020
by Clerk,
U.S. Bankruptcy Court
District of New Jersey

Chapter 11

Case No. 18-34808 (SLM)

(Jointly Administered)

**STIPULATION AND ORDER (i) REGARDING
PLAN INJUNCTION AND (ii) RESOLVING OBJECTION
TO CLAIM NO. 162 FILED BY EDWARD P. SOLOMON**

The relief set forth on the following pages, numbered two (2) through eight (8), is

hereby **ORDERED**.

DATED: July 8, 2020

A handwritten signature in black ink, appearing to read "Stacey L. Meisel".

Honorable Stacey L. Meisel
United States Bankruptcy Judge

1 The Post-Confirmation Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Frank Theatres Bayonne/South Cove, LLC (3162); Frank All Star Theatres, LLC (0420); Frank Theatres Kingsport LLC (5083); Frank Theatres Montgomeryville, LLC (0692); Frank Theatres Rio, LLC (1591); Frank Theatres Towne, LLC (1528); Frank Theatres Mt. Airy, LLC (7429); Frank Theatres Sanford, LLC (7475); Frank Theatres Shallotte, LLC (7548); Revolutions at City Place LLC (6048); Revolutions of Saucon Valley LLC (1135); Frank Entertainment Rock Hill LLC (0753); Frank Entertainment PSL, LLC (7033); Frank Hospitality Saucon Valley LLC (8570); and Galleria Cinema, LLC (2529).

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Debtors: Frank Theatres Bayonne/South Cove, LLC, *et al.*

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This matter comes before the Court on the objection of Advisory Trust Group LLC, in its capacity as Trustee (the “Liquidating Trustee”) of the Frank Theatres Liquidating Trust (the “Liquidating Trust”) with respect to the Claim filed by Edward P. Solomon (“Solomon”); and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the dispute has been given and that no other or further notice is necessary; and upon the record herein and the agreement of the Liquidating Trustee and Solomon; and the Court having determined that the relief provided for herein is in the best interests of the Liquidating Trust and its creditors; and after due deliberation and good and sufficient cause appearing therefor;

RECITALS

WHEREAS Solomon alleges that he was the subject of an injury (the “Injury”) as a result of an incident that allegedly occurred on November 23, 2018 at the Frank Theatres CineBowl & Grille & IMAX, 14775 Lyons Road, Delray Beach, FL 33446.

WHEREAS on December 19, 2018 (the “Petition Date”), each of the above-captioned debtors and debtors-in-possession (collectively the “Debtors”), filed voluntary petitions for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”). The chapter 11 cases are pending before the Honorable Stacey L. Meisel, United States Bankruptcy Judge, and are being jointly administered under the lead case, *In re Frank Theatres Bayonne/South Cove, LLC, et al.*, Case No. 18-34808 (SLM) (the “Chapter 11 Cases”).

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WHEREAS, the Debtors continued in possession of their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, on July 29, 2019, the Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' First Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 687] (the “Confirmation Order”) confirming the Debtors’ *First Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*.

WHEREAS, on October 29, 2019, the Court entered a consent order [Docket No. 783] confirming the *Debtors' Modified First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 783] (the “Modified Plan”).

WHEREAS, on October 31, 2019, the Effective Date of the Modified Plan occurred. *See Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates* [Docket No. 792].

WHEREAS, the Liquidating Trust was created pursuant and to effectuate the Modified Plan, *see* Frank Theaters Liquidating Trust Agreement (the “Liquidating Trust Agreement”) at 1, and for the purpose of distributing the Liquidating Trust Assets to the Liquidation Trust beneficiaries . . .” Modified Plan at Section V.B.

WHEREAS, pursuant to the Liquidating Trust Agreement, the Liquidating Trustee “shall have the power to take the actions granted in [the] Agreement . . . including but not limited to . . . taking any action with respect to appeals, counterclaims, and defenses of or with respect to such Claims and Causes of Action . . .” *See* Liquidating Trust Agreement, at Section 3.1.

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WHEREAS, as a result of the Debtors' bankruptcy filing, Solomon was stayed from bringing suit against the Debtors.

WHEREAS, on or about March 11, 2019, Solomon filed proof of claim number 162 ("Claim No. 162") against Debtor Frank Entertainment Group, LLC ("Frank Entertainment Group").

WHEREAS, on April 3, 2020, the Liquidating Trust filed its *Fourth Omnibus Objection to Claims Seeking to Disallow and Expunge Certain Non Liability Claims* (the "Fourth Omnibus Objection") [Docket No. 927] in which it sought to disallow certain claims including Claim No. 162.

WHEREAS, pursuant to the injunction contained in Article IX.F of the Modified Plan (the "Plan Injunction"), Solomon is permanently enjoined from commencing a lawsuit against any of the Debtors in connection with the Injury.

WHEREAS, the parties agree that Frank Entertainment Group would be an indispensable party to any lawsuit related to the Injury.

WHEREAS, the parties wish to resolve their disputes in connection with Claim No. 162.

NOW, THEREFORE, for good cause shown, **IT IS HEREBY ORDERED** as follows:

1. The automatic stay and the Plan Injunction are modified to the extent necessary to permit Solomon to (1) make demand for, discuss and negotiate a resolution of the claimed injury and damages with the insurer(s) under any applicable insurance policies, (2) commence litigation (the "Litigation") and continue such litigation to a final judgment and to (3) execute, levy, and collect upon any judgment rendered in any such litigation solely from applicable insurance

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polices, if any, and not against the Debtors, their estates, the Liquidating Trust or their successors.

2. Solomon agrees and acknowledges that (1) any recovery arising from the Litigation with respect to the Debtors, their estates, or their successors is limited to funds made available from applicable insurance policies, if any, and not from the Debtors, their estates, or their successors, and (2), to the extent that an applicable insurance policies, if any, do not satisfy a judgment, settlement, or other disposition with respect to the litigation, for any reason, neither the Debtors, their estates, the Liquidating Trust, or any of their successors shall satisfy nor be liable for any such unsatisfied portion, which might otherwise be considered a general unsecured claim in these chapter 11 proceedings, and Solomon shall not seek to collect on any such unsatisfied portion from the Debtors, their estates, the Liquidating Trust, or any of their successors.

3. Claim No. 162 and any other claims or proofs of claim filed or to be filed by Solomon in connection with the Injury or any Litigation against the Debtors, their estates, or their successors in these chapter 11 cases, if any, are, by entry of this Stipulation, deemed disallowed and shall be reflected as such on the Bankruptcy Court's official claims register.

4. Nothing in this Stipulation: (i) alters, modifies, or otherwise amends the terms and conditions of, or the coverage provided by, any insurance policies issued at any time to any of the Debtors, their affiliates or predecessors of any of the foregoing or of any agreements related thereto; (ii) alters or modifies the duty, if any, that any applicable insurer or third party administrator has to pay claims covered by any alleged applicable insurance policy; (iii); creates or permits a direct right of action by Solomon against any insurers; or (iv) precludes or limits, in

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any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any allegedly applicable insurance policy.

5. By entering into this Stipulation, neither party is waiving nor will be deemed to have waived any available claims or defenses, including at law, equity, or otherwise with respect to any litigation, except as otherwise provided in this Stipulation.

6. Neither the Stipulation nor any negotiations and writings in connection with this Stipulation will, in any way, be construed as or deemed to be evidence of or an admission on behalf of any party regarding any claim or right that such party may have against the other party.

7. Each of the Parties hereto represents and warrants that it is duly authorized to enter into and be bound by this Stipulation.

8. This Stipulation may be executed in multiple counter parts, any of which may be transmitted by facsimile or electronic mail, and each of which will be deemed an original, but all of which together will constitute one instruments.

9. Notwithstanding any applicability of any of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Stipulation shall be immediately effective and enforceable upon its entry.

10. The Bankruptcy Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation.

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Dated: July 6, 2020

STIPULATED AND AGREED:

RIKER, DANZIG, SCHERER,
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